

### **REMARKS**

This is in response to the Office Action mailed on July 1, 2004, and the documents cited therewith. Claims 2-31 and 33-38 are now pending in this application. No new subject matter has been added.

**Claims 2-8, 12, 14-37 were rejected under 35 USC § 102(b) as allegedly being anticipated by Jackson et al. (U.S. Patent No. 4,741,944; "the '944 patent").** The Examiner asserts that the claims are inherently disclosed in the '944 patent substantially as set forth in the previous office action. This rejection is respectfully traversed..

Claims 2-8, 12, 14-36, and 37 recite a wet-wipe that includes a composite elastic material having at least one non-woven elastic layer and at least one non-woven gatherable layer. In addition, claim 2 recites that the composite elastic material has a cup crush value less than about 120 g per cm and a CD tensile strength of greater than about 0.68 pounds. Claim 3 recites that the composite elastic material has a cup crush to density ratio of less than about 1579 cm<sup>2</sup> and greater than about 950 cm<sup>2</sup>. The Examiner admits that Jackson *et al.* do not explicitly disclose the claim limitations cup crush of the elastic composite and cup crush to density ratio values (See Page 4 of the Office Action dated August 29, 2002). Consequently, Jackson *et al.* fail to disclose each and every limitation of the claimed invention.

The Examiner's presumption of inherency is based on the disclosure of a similar material and similar production steps. As stated at page 3 of the Office Action dated October 2, 2003, the Examiner relies on deductive reasoning to lead to the conclusion of inherency. Applicants respectfully request that the Examiner reconsider the Declaration under 37 C.F.R. §1.132, by Applicant, Scott R. Lange. It is respectfully submitted that Applicants' burden to prove the absence of inherency has been satisfied by this Declaration for the reasons provided below.

Applicants have tested a representative composite elastic material prepared according to the Jackson *et al.* disclosure and reported the test results in the Declaration. The Jackson material prepared had a density of 0.035 g/cm<sup>3</sup>, a basis weight of 72 g/m<sup>2</sup> and a cup crush of 186.5 g per cm. The cup crush to density ratio of the Jackson material was 5328.6 cm<sup>2</sup>. Applicants note that the cup crush of the Jackson material was more than 50% greater than the limitation of claim 2. Likewise, the cup crush to density ratio of the Jackson material was more

than three times greater than the upper limit recited in claim 3. Thus, Jackson does not disclose a composite elastic material that meets the limitations required by the instant claims. Accordingly, it is respectfully submitted that the Jackson *et al.* disclosure does not anticipate either claim 2 or claim 3.

A single reference may anticipate without disclosing a feature of the claimed invention if that characteristic is necessarily present, or inherent, in the single anticipating reference. *See Schering Corp. v. Geneva Pharm., Inc.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003). In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic is necessarily present in the teachings of the reference. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

Applicants respectfully submit that they have clearly shown that the inherent characteristics alleged by the Examiner are not present in Jackson material. Specifically, the cup crush and cup crush to density ratio of the Jackson material exceed the claimed limitations. If this characteristic is inherent, then there must be a factual basis for the allegation that this limitation is necessarily present. The mere fact that a certain limitation may be present in the prior art is not sufficient to establish inherency of that result or characteristic. *See In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). In the instant case, the Applicants have shown that the cup crush and cup crush to density ratio of the Jackson material do not necessarily meet the claim limitations. Since the Jackson material tested did not meet the limitations of neither claim 2, nor claim 3, it is submitted that the claimed features are not inherently disclosed in Jackson.

In the Final Office Action, the Examiner alleges that an analysis of the properties at the tested basis weight of the 72 g/m<sup>2</sup> is not commensurate with the scope of the Jackson *et al.* disclosure, showing an article basis weight of 50-90 g/m<sup>2</sup>. In the Final Office Action, the Examiner did not refute the fact that the Jackson material tested failed to meet the claim limitations. Nor did the Examiner provide any basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics are necessarily present in the Jackson disclosure. Instead, the Examiner has required the Applicants to provide

additional data to prove that the Jackson material at higher and lower values in the basis weight range will not meet the limitations of the claims.

In response to the Examiner's comments, "Applicant cannot use Applicant's own data to make allegedly accurate guesses as to the resultant properties resulting from the use of Jackson *et al.*'s composite," at page 4 of the Final Action, Applicants note that Table 2 includes results for commercial products and composite materials prepared according to the invention. Applicants respectfully submit that the analysis of their data is reasonable to one of ordinary skill in the art. In addition, inherency may not be established by probabilities or possibilities regarding what may have resulted in the prior art. *See In Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). Therefore, Applicants respectfully submit that use of their data was proper to refute an anticipation by inherency rejection.

Furthermore, Applicants respectfully submit that a person of ordinary skill in the art would recognize the significance of the difference between the cup crush values of non-woven composite elastic materials of the Jackson *et al.* and the cup crush values of the claimed invention. A person of ordinary skill in the art would recognize that the cup crush values of claimed invention are not inevitably present in the Jackson *et al.* disclosure because the high cup crush of the Jackson material would not provide the cloth-like feel characteristics of the claimed invention (see specification at page 6, lines 17-24). In addition, the person having ordinary skill in the art would recognize that increasing the basis weight, *e.g.*, to 90 g/m<sup>2</sup>, would result in an increase in stiffness and cup crush of the material, thereby reducing the softness. Therefore, when analyzing the material prepared according to Jackson *et al.* at a basis weight above 72 g/m<sup>2</sup>, the person having ordinary skill in the art would realize that the material prepared according to Jackson having a basis weight greater than 72 g/m<sup>2</sup> would still not meet the limitations of the instant claims.

Presuming that the Examiner has met his burden of proof by deductive reasoning, Applicants have rebutted this finding with evidence that the cup crush and cup crush to density ratio for the elastic material disclosed in Jackson *et al.* are different from the claimed ranges of the present invention. The Declaration clearly shows that the cup crush values for the Jackson material do not necessarily meet the limitations of claim 2 nor claim 3. Furthermore, it is submitted that one skilled in the art would not expect that the material disclosed in Jackson *et al.*

could meet the limitations of the instant claims. Applicants respectfully submit that the Examiner has failed to make the requisite showing of inherent anticipation because the Examiner did not present any direct evidence that the features of the claimed invention are necessarily present in Jackson *et al.*

It is respectfully submitted that Applicants have satisfied their burden to show an unobvious difference between the claimed invention and the Jackson *et al.* disclosure (as required by M.P.E.P. §2112). Thus, Applicants respectfully submit that the Jackson *et al.* disclosure does not anticipate the pending claims. Accordingly, it is respectfully submitted that the burden has shifted back to the Examiner and withdrawal of the §102 rejection is respectfully requested.

**Claim 38 was rejected under 35 U.S.C. 103(a) as allegedly obvious over Jackson *et al.* (U.S. Patent No. 4,741,944). This rejection is respectfully traversed.**

The Examiner alleges that that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have employed a homogenous blend of pulp and polypropylene to make the spunbonded web.

As discussed herein above, the material of Jackson *et al.* does not meet the limitations of the claimed invention since the disclosure fails to disclose the composite elastic material's density and cup crush values. It is respectfully submitted that a *prima facie* case of obviousness has not been established because the Jackson *et al.* disclosure does not teach or suggest all the limitations of the claimed invention.

In addition, there is no teaching or suggestion in the Jackson *et al.* disclosure to modify the non-woven web disclosed by the addition of pulp to form a homogenous mix of pulp and polypropylene fibers for the spunbonded non-elastic web. The Jackson material is designed to improve the dispensing reliability of the wet wipes (see column 13, lines 1-7). Jackson specifically discloses:

"an interesting observation that has been made is that the effect of gravity of the liquid contained within the present wipes appears to be significantly less than its effect of prior wipes of cellulosic materials." (see column 13, lines 9-12).

Based on this teaching, a person of ordinary skill in the art would not have been led to modify the Jackson disclosure to prepare the claimed composite material. Thus, Applicants respectfully submit that the claimed wet wipes wherein the gatherable layer includes a homogenous mix of pulp (i.e., cellulose fibers) and polypropylene fibers would not be obvious in view of the Jackson *et al.* disclosure. Accordingly, withdrawal of this rejection is respectfully requested.

**Claims 9-11 were rejected under 35 USC § 103(a) as allegedly being unpatentable over Jackson *et al.* in view of Sabee (U.S. Patent No. 5,200,246).** The Examiner alleges that one of ordinary skill in the art would be motivated to combine the disclosure of multilayer material in Jackson with the use of parallel elastic fibers disclosed in Sabee. This rejection is respectfully traversed.

The Examiner alleges that one of ordinary skill in the art would be motivated to combine the disclosure of the multilayer material of Jackson with the parallel elastic fibers disclosed in Sabee. It is respectfully submitted that Sabee fails to cure the deficiencies of Jackson *et al.* as set forth above in Section I.

Sabee discloses the formation of an elastic web by depositing a melt blown stream onto both sides of stabilized continuous filaments and that it is the deposition on both sides of the filaments and subsequent encasement of the filaments in the meltblown fiber matrix that results in the reduced stiffness, drape and hand (see column 2, lines 52-68). However, Sabee fails to disclose any data to explain an assertion that its parallel filament system would provide a composite elastic material having reduced stiffness and thus a softer feel. Hence, Sabee fails to provide any evidence that reduced stiffness will provide increased softness. Furthermore, there is no suggestion or motivation in the combined disclosures of Jackson and Sabee that would provide a person skilled in the art with a reasonable expectation that the composite material of Jackson *et al.* would be altered such that it would meet the limitations of the present claims. Accordingly, neither Jackson *et al.* nor Sabee, taken alone or in combination, teach or suggest the composite elastic material of the claimed invention. Therefore, withdrawal of the §103 rejection of claims 9-11 is respectfully requested.

**Claim 13 was rejected under 35 USC § 103(a) as allegedly being unpatentable over Jackson et al. in view of Georger et al. (U.S. Patent No. 5,508,102).** The Examiner alleges that that one of ordinary skill in the art, at the time the invention was made, would be motivated to combine the disclosures of Jackson *et al.* and Georger *et al.* to replace the non-elastic webs of Jackson *et al.* with the matrix of polyethylene meltblown fibers and fibrous pulp fibers to improve the abrasion resistance of the resulting elastic composite. This rejection is respectfully traversed.

The Examiner alleges that that one of ordinary skill in the art, at the time the invention was made, would be motivated to combine the disclosures of Jackson *et al.* and Georger *et al.* to replace the non-elastic webs of Jackson *et al.* with the matrix of polyethylene meltblown fibers and fibrous pulp fibers to improve the abrasion resistance of the resulting elastic composite. It is respectfully submitted that Georger fails to cure the deficiencies of Jackson *et al.* as set forth above in Section I.

Georger *et al.* discloses an abrasion resistant fibrous nonwoven material composed of fabric designed to produce an abrasion resistant material with high polymer content at the surface. Applicants respectfully submit that there is no teaching or suggestion to combine the disclosure of Jackson with the disclosure of Georger *et al.* to obtain the claimed invention. The process conditions required to produce a composite elastic material having improved abrasion resistance as disclosed in Georger *et al.* would result in a stiff and abrasive composite elastic material (*e.g.*, the gatherable layer). Therefore, the composite elastic material produced in Georger *et al.* would not be expected to provide soft, cloth-like properties of the composite material of the claimed invention.

Further, there must be a reasonable expectation of success that the combination of the cited disclosures, a high abrasion resistant non-woven web, of Georger *et al.*, with the polymeric web of Jackson *et al.* would provide the composite elastic material having and/or the wet wipes having the recited claim limitations. A person having ordinary skill in the art would not have a reasonable expectation that a composite elastic material prepared according to the combined disclosures of Georger *et al.* and Jackson *et al.* would provide a soft and flexible wet wipe product that could meet the limitations of the pending claims. It is respectfully submitted that the wet-wipes using a composite elastic material in the claimed invention are not obvious over the

combined disclosures of Jackson *et al.* and Georger *et al.* Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6968 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

SCOTT R. LANGE ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6968

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By   
William F. Prout  
Reg. No. 33,995

"Express Mail" mailing label number: EV 553 979 702 US

Date of Deposit: March 3, 2005

This paper or fee is being deposited on the date indicated above with the United States Postal Service pursuant to 37 CFR 1.10, and is addressed to: MS RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.